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Before the
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FCC - MAIL ROOM

FCC 92-541

In the Matter of)

Implementation of Section 8 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

MM Docket No. 92-263

Consumer Protection and Customer Service)

COMMENTS OF CITY OF KALAMAZOO, MICHIGAN
REGARDING PROPOSED RULE MAKING FOR CONSUMER
PROTECTION AND CUSTOMER SERVICE STANDARDS

In response to deteriorating customer service, the City of Kalamazoo, Michigan, developed in 1990 a customer service standard ordinance based on the NCTA voluntary standards. Because the ordinance was tested in federal court on grounds similar to that which the FCC is now seeking comment, we think our experience is relevant to this rule making procedure.

History

The community cable television, originally installed by local broadcaster John Fetzer, was sold to Cablevision System Corporation in 1986. Cablevision also acquired cable operations in adjacent jurisdictions, developing an integrated system of 44,000 subscribers, 20,000 of whom are in the City of Kalamazoo. The remaining subscribers are in the adjacent cities of Portage and Parchment and the adjoining Townships of Comstock, Kalamazoo and Oshtemo.

Experience With Customer Service Standards

By 1990, customer service had seriously deteriorated and many complaints were received by the City. In response, the Legislative Committee held a public hearing in June, 1990, to hear public input about cable service, and what standards the community wanted.

After the public hearing, the Legislative Committee decided to utilize the NCTA standards as the basic framework for a "Consumer Protection and Customer Service" with some variations, based upon public input, reflection and study. Generally speaking the standards were made more specific, additional areas were addressed and penalties for the noncompliance were included.

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The City Commission considered the ordinance. The ordinance was only passed after a public hearing, extensive fact-finding, a series of meetings and discussions, and two readings in public. Although the MSO's representatives (local general manager, and a staff member from Cablevision's Long Island headquarters) did not speak at the public hearing and adoption of the ordinance, Cablevision filed suit against the City nine days later.

Based upon the experience of developing and defending in Federal Court, a Consumer Protection and Customer Service Standards Ordinance, based in large part on the NCTA standards, we think the City of Kalamazoo has a unique perspective to share. Exhibits reflecting the City's experience include:

- Exhibit 1--City Ordinance No. 1503 (Kalamazoo's Customer Service Protection and Standards Ordinance);
- Exhibit 2--City Attorney opinion of August 20, 1990 regarding the legality of the then proposed Ordinance; and
- Exhibit 3--Transcript of Federal Court Bench Ruling denying Cablevision's request for a temporary restraining order ("TRO") and preliminary injunction (W.D. Mich. Case No. 4:90-CV-170, Dec. 20, 1990) (Enslen, J.).

In addition, the City of Kalamazoo relies for its understandings upon

- (a) The Conference Report on S.12, as found in the Congressional Record for September 14, 1992, pp H8308--H8335, and
- (b) Committee Report 98-934, 98th Cong., 2d Sess., 79, pertaining to the 1984 Cable Act.

* * *

The City of Kalamazoo ("City") proposes to itemize its concerns associated with specifically numbered paragraphs of the "Notice of Proposed Rule Making" ("NRPM") in MM Docket No. 92-263, which pertains to the prescription of standards for cable customer service.

FCC NPRM Paragraph 4. "How Congress intended this process to function is thus a threshold question on which we seek comment . . ."

CITY OF KALAMAZOO RESPONSE:

The City believes that Congress intended for the FCC to prepare standards that were to be enforced, but with local and State governments having the option of adopting higher and/or more restrictive requirements, with the most restrictive regulation applying on a case-by-case basis. Thus it was the intent of Congress in the 1992 bill to do nothing that would prohibit or restrict local and State governments from enforcing or developing consumer protection ordinances, rules, regulations or statutes

permitted by the 1984 Federal Cable Act ("1984 Act"). 47 USC §522(a) and (c); 98 STAT. 2796 §632(a) and (c); H.R. Rep. No. 98-934, 98th Cong. 2d Sess., 79.

FCC NPRM Paragraph No. 5: Questions regarding the role and impact of any Federal standards adopted.

CITY OF KALAMAZOO RESPONSE:

A. Statutory Language. First Section 632(a) of the 1984 Cable Act stated a local government

" . . . may require, as a part of a franchise, including a franchise renewal, subject to section 626 [the "Renewal" section]), provisions for the enforcement of--

"(1) customer service requirements of the cable operator; and

"(2) construction schedules"

Then the 1992 Act changed Section 632 to read:

"(a) FRANCHISE AUTHORITY ENFORCEMENT.-- A franchising authority may establish and enforce--

"(1) customer service requirements of the cable operator and

"(2) construction schedules and other construction-related performance requirements, including construction-related performance requirements, of the operator." (emphasis added).

Both statutes were specifically authorizing local governments to "require" (1984) and "establish and enforce" (1992) cable customer service requirements. This was not preserving the right of a franchising authority to establish any customer service requirements. If it had been it would have been largely illusory, because regulation of utilities, including consumer protection, is generally pre-empted by states, who confer this power on utility regulation commissions, sometimes a state attorney general, and less often with supplementary "private attorney general" statutes or doctrines. Congress recognized this, and in two cable acts conferred upon local and state governments the right to establish cable customer service requirements.

(B) Powers of Section 632(c) Equal to Section 632(a). Likewise, in Section 632(c), the 1984 Cable Act specifically conferred power, equal to Section 632(a), on local and state governments that were not in the franchise issuing or renewal phases. See Comcast Cablevision v City of Sterling Heights, 178 Mich App 117, 443 NW2d 440 (Mich. Ct. App. 1989) lv. to app. den., 434 Mich 876 (1990), cited with approval, Cable Television Association of New York v

Finnegan, 954 F2d 91, 100 (2d Cir 1992).

That **specific power** was drawn upon by the City of Kalamazoo in developing its **Cable Television Consumer Protection and Consumer Service Standards Ordinance** ("Ordinance") (Ord. No. 1503, adopted December 10, 1990; Section 41-1 et seq, Kalamazoo City Code).

C. **Federal Court Decision.** When the MSO operating in Kalamazoo filed suit in Federal Court on December 19, 1990, in an attempt to prevent the City Ordinance from going into effect, **the Section 632(c) issue was considered by the Federal Court.** Cablevision of Michigan v City of Kalamazoo, Case No. 4:90-CV-170 (W.D. Mich., Dec. 20, 1990) (Ruling Denying Temporary Restraining Order and Preliminary Injunction), (Enslen, J.) Transcript pp. 18-19, lines 12-15 (in Exhibit 4).

Judge Enslen said:

"I find nothing in the Act that supports a finding that this legislation is inconsistent with the Act. As a matter of fact, the Act explicitly provides that the City retains such power." Cablevision of Michigan v City of Kalamazoo, Transcript at 19, lines 12-15, citing, H.R. [Rep.] No. 98-934 [98th Cong. 2d Sess.] 1984 UNITED STATES CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS, at pages 4,655 and 4,716.

The Court went on to say:

"By the way, the statute already permits the contracts with the franchises and the franchisors to contain customer service standards. That poses this interesting question which has not been argued: Supposing the franchise agreement between now Cablevision and the City of Kalamazoo gave the Cablevision franchisee one hour to answer a customer complaint, and that the new ordinance only permits the franchisee three minutes to answer a customer complaint. That, Mr. Callander argues, would be a unilateral alteration of a contract agreement.

"That is a facially interesting argument I think. With that argument the Court is satisfied, however, that the legislation specifically has permitted not only for the city to have in its franchise agreement customer service standards, but left to the City or the franchising authority the right to pass legislation for the purpose of protecting the consumer; and one must remember the language that I underscored earlier."

Cablevision of Michigan v City of Kalamazoo, Transcript at p 21, lines 8-25 (emphasis added).

The Federal Court concluded by denying the MSO's request for a temporary restraining order, and also denying "Cablevision['s]

request for a preliminary injunction." Transcript, p 24, lines 5-7.

D. "General Applicability" is not supported by statutes. Based on the above we believe that the "general applicability" language is merely a non-statutory gloss on the 1984 and 1992 Cable Acts, which is not justified by the statute, nor by germane legislative history.

The City of Kalamazoo believes its view is strengthened by the last sentence of Section 8(c)(2) of the 1992 Federal Cable Act, where it reads:

"Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section."

(Sect. 632(c)(2) of the Communications Act of 1934, as amended; 47 USC 552(c)(2)).

FCC NPRM Paragraph No. 6: Regarding the interplay of sub-sections (a) and (c) of the Cable Act.

CITY OF KALAMAZOO RESPONSE:

As indicated above, in the City's Response commenting on NPRM Paragraph No. 5, the City of Kalamazoo states that both the 1984 and 1992 statutes clearly granted and authorized state and local governments to "require" (1984) and "establish and enforce" Cable customer service requirements. 98 STAT 2796, Sec. 632(c), codified as 47 USC 552(c); Sect. 8(c) of 1992 Cable Act, amending 47 USC 552(c).

This was the intention of Congress in 1984 (H.R. Rep. No. 98-934, 98th Congress, 2d Sess., 79 and it was specifically recognized by Judge Enslen in the Cablevision v Kalamazoo case where he said:

"[T]he Court is satisfied, however, that the legislation specifically has permitted not only for the City to have in its franchise agreement customer service standards, but left to the City or the franchising authority the right to pass legislation for the purpose of protecting the consumer

."

Cablevision of Michigan v City of Kalamazoo, Transcript at p. 21, lines 19-25, (emphasis added).

This position was also held by the Michigan Court of Appeals, cited with approval by the Second Circuit. Comcast Cablevision v City of Sterling Heights, 178 Mich App 117, 443 NW2d 440 (Mich. Ct. App.

1989) lv. to app. den., 434 Mich 876 (1990), cited with approval, Cable Television Association of New York v Finnegan, 954 F2d , 100 2d Cir 1992).

FCC NPRM Paragraph No. 7: Comment sought on what impact Section 8 of the 1992 Cable Act has on existing franchise agreements prior to renewal.

CITY OF KALAMAZOO RESPONSE:

The City of Kalamazoo unequivocally states that subsequently-enacted Consumer Protection and Customer Service Standards ordinances, statutes, or regulations by local or state governments are separate and apart from cable franchise agreements. Our position has been tested in federal litigation, and upheld. In Cablevision v Kalamazoo, "the Court [was] satisfied, however, that the legislation specifically has permitted not only for the city to have in its franchise agreement customer service standards, but left to the city or the franchising authority the right to pass legislation for the purpose of protecting the consumer; and one must remember the language that I underscored earlier." Transcript, p.21 (lines 19-24).

FCC NPRM Paragraph No. 10: Regarding experience with NCTA standards, setting time frames for compliance, measuring compliance and establishing penalties.

CITY OF KALAMAZOO RESPONSE:

The City of Kalamazoo supports the NATOA's position that while the NCTA voluntary standards may be a useful starting point, they are vague, not stringent enough, and do not address a number of issues that need to be addressed.

The City of Kalamazoo used the NCTA standards as a baseline for adopting a customer service ordinance in 1990, but found we needed to be more specific and we needed to address additional issues if Kalamazoo citizens were to expect a satisfactory level of service (see attached summary of standards and compliance).

Within 15 days of the City successfully defending the ordinance in Federal court, the cable company began to come into compliance with the ordinance. They were in full compliance within four months. Customer satisfaction has greatly improved as measured by a 75% decrease in complaints received by the City's cable office.

It is appropriate for the local franchising authority to set time frames for compliance, taking into consideration the various initiatives the cable company will have to undertake. This is consistent with the local franchising role in overseeing the cable operation's compliance with the terms of the franchise document.

Additionally, it is essential that the local governments measure compliance and establish penalties if the standards are to be enforced. (The City of Kalamazoo requires a monthly report, reserves the right to audit the report, and assesses a penalty of \$100 per occurrence of non-compliance.)

FCC NPRM Paragraph No. 12: Communications outside normal operating hours.

CITY OF KALAMAZOO RESPONSE:

Although greatly decreased in number, subscriber complaints do continue to be received. They primarily have to do with communicating with the cable operator after hours. In hind sight, we would like to have seen the city ordinance be more explicit in this area.

Although a 24 hour answering service is required, it does not satisfy area subscribers. A small, but well trained, staff available until 10:00 p.m. would go a long way to increase customer satisfaction.


FCC NPRM Paragraph No. 14: Regarding installation and service calls.

CITY OF KALAMAZOO RESPONSE:

The Kalamazoo ordinance with four hour appointment windows and a penalty of one month free service for a missed appointment has alleviated some of the complaints. We still, however, receive many complaints from subscribers who are working and don't have four hours to wait at home. Again, in hind sight, we recommend making available some appointments after 5:00 p.m., Saturdays and the option of "call to meet" and "first call of the day." Several service companies and utilities in the area will call a person at their office to let them know they are finishing one job and can be at the subscribers house within a specified time. "The first call of the day" (on a first come, first serve basis) meets several people's need for a specific time. These options could easily be included in the Commission's set of rules. When pressed, the local cable operator will provide these options, but they **never** publicize them.

The City of Kalamazoo is aware of the enormous effort the FCC is having to put forth in order to carry out the directions of the U.S. Congress with respect the Cable Act of 1992. We appreciate your work and thank you for giving our comments your serious consideration.

Respectfully submitted this 9th day of January, 1993.


Joan Burke, Cable Administrator

Matthew Morris, Asst. City Attorney

City of Kalamazoo, Michigan
230 E. Crosstown Parkway
Kalamazoo, MI 49001
(616) 343-2211

Cablevision Compliance with City of Kalamazoo Ordinance 1503

	Pre-Ordinance	Ordinance	Compliance
Section 41-11 Service Center Hours	8:30-5:30 no Sat in Kalamazoo	8:30-6:00 Sat 9-12:00 in Kalamazoo	January 1991
Section 41-12 Phone Hours	8:30-5:30	8:30-6:00 Sat 9-12	January 1991
Section 41-13 Busy Signals	Silent	Busy Signal 3% of time	3 New CSRs hired, new phone system and automatic response unit installed 4/91, adjusted 5/91 notification on "instant access" in bill stuffer 6/91
Section 41-14 Response Time	Silent	Answer within 4 rings connected to CSR within 45 seconds on average	Average speed answered: 1990 3.05 min. 1991 47 sec. 1992 22.67 sec.
Section 41-15 Response to Subscriber Complaints	Silent	Response within 1 day, resolution in 3 days	One day response
Section 41-22 Installation	3 weeks	7 days	Within 7 days
Section 41-23 Service Problems and Outages	Response to service problems 24 hours	Response to service problems within 24 hr, other 36 hr Credit for outages over 24 hr	Notification of credit for outages on back of bill; have not missed a 4 hr window
Section 41-24 Scheduled Appointments	Silent	Establish 4 hr. appt. windows, consumer credit for one month free service if appt. missed	Notification out 7/91 & 8/91 and details on back of bill. Added Saturday and after 5 appts.

	Pre Ordinance	Ordinance	Compliance
Section 41-31 Communication to Subscribers	Silent	Requires annual notification of products, prices, service policies, lockout devices, refund policies, complaint procedures, privacy rights, how to use the system and VCR's and responsibility of City	<i>Cable Q & A Consumer Information</i> brochure mailed to all subscribers in July and August. Separate phone number is installed at Access Center 383-1830.
Section 41-32 Bills	Silent	Bills clear and concise Annual consulting with City	—
Billing Disputes	Silent	No termination of service pending resolution of dispute	Stated policy No complaints
Section 41-33 Refunds	Silent	Refund checks issued within 45 days	Stated policy
Section 41-34 Rate or Channel Changes	30 day notification when within company control	30 day notification when within company control	Notification received by City for both rate and channel changes.
Section 41-81 Penalties	None	Judgement for each event involving any one consumer shall not exceed \$100	Have not assessed a penalty
Section 41-82 Evaluation of Violations	None	The same as criteria for renewal or denial	Reaffirmed in recent court decisions

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. 1503

AN ORDINANCE CREATING AND ADDING A NEW CHAPTER 41 TO THE CODE OF ORDINANCES OF THE CITY OF KALAMAZOO, MICHIGAN, PERTAINING TO THE REGULATION OF CABLE TELEVISION SERVICE WITHIN THE CITY LIMITS OF THE CITY OF KALAMAZOO, MICHIGAN, INCLUDING GENERAL PROVISIONS AND DEFINITIONS, CONSUMER PROTECTION AND CONSUMER SERVICE STANDARDS, PENALTIES, AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, after receiving a recommendation from the Legislative Committee of the City Commission, and following evidence presented as a result of the Public Hearing held in June, 1990, the City Commission has determined that it is necessary to reasonably regulate the operation of cable television service within the City of Kalamazoo, including the articulation and promulgation of consumer protection and consumer service standards; and

WHEREAS, the City Commission finds that consumer protection and consumer service standards should contain a quantifiable telephone response time, reasonable provisions for office and telephone services, installations, outage and service calls, communications, bills and refunds, and program deletions; and

WHEREAS, the City Commission of the City of Kalamazoo finds:

- (1) The City currently regulates one cable television company operating in the City pursuant to Consent Agreement and may be regulating other cable operators in the future by Consent Agreement, Side Agreement, City Code, and applicable federal law. Although the City may grant non-exclusive Consent Agreements to cable television operators, currently cable operations act as a monopoly because there is no competing cable television provider in the City; and
- (2) The majority of the City's television households receive television services, including community programming, through cable, and cable television has become increasingly dominant in Kalamazooans' access to news, entertainment, and information; and

- (3) The City's Consent Agreement with the cable operator provides that the City reserves the "police power" for regulations in the public interest; and
- (4) Applicable federal law, as set forth in the Cable Communications Policy Act of 1984, Sec. 632(c) [47 U.S.C. Section 552(c)], provides that a regulating municipality may require provisions for the enforcement of customer service requirements of a cable operator, and provides that nothing in the Act shall be construed to prohibit municipal authority from enacting or enforcing any consumer protection law; and
- (5) The customer service policy does not currently contain any specific customer service standards. Existing standards and policies in the 1981 Fetzer-City cable Consent Agreement on customer service and consumer protection are incomplete, and/or undeveloped. It is important for consistent standards to be established to assist the City Commission and the Office of the Cable Administrator in responding to unresolved consumer and subscriber complaints pertaining to cable television services; and
- (6) The Legislative Committee of the City Commission has held a public hearing to seek public and subscriber input on the existing customer service, the need for customer service standards and the nature of the standards to be developed. The Commission has received testimony and comments from the cable television company operating in the City, and from other jurisdictions; and
- (7) The original baseline for this ordinance is the set of voluntary customer service standards issued by the National Cable Television Association (NCTA), a cable-operator industry group, in February of 1990; and
- (8) The Legislative Committee has developed, reviewed, and revised proposed standards in response to the comments and input from the cable company and interested members of the public. Based on the testimony received and information received at work sessions, the Legislative Committee has recommended that the City Commission adopt the Cable Television Consumer Protection Policy in an ordinance as set forth herein; and

WHEREAS, the City Commission hereby finds that in order to protect the public health, safety, comfort and general welfare of the people of the City of Kalamazoo, the following regulations and standards are appropriate, necessary, fair and reasonable;

NOW, THEREFORE, THE CITY OF KALAMAZOO ORDAINS:

Section 1. That the Kalamazoo City Code of Ordinances is hereby amended by adding a Chapter, to be numbered Chapter 41, which said chapter shall read as follows:

CHAPTER 41

CABLE TELEVISION

ART. I. In General, §§41-1 -- 41-10

ART. II. Consumer Protection and Customer Service Standards
§§41-11 -- 41-40.

Div. 1. Office and telephone services
§§41-11 -- 41-20

Div. 2. Installations, outages and service calls,
§§41-21 -- 41-30

Div. 3. Communications, bills and refunds,
§§41-31 -- 41-40.

ART. III. Reserved. §§41-41 -- 41-60.

ART. IV. Reserved. §§41-61 -- 41-80.

ART. V. Penalties. §§41-81 -- 41-82.

ARTICLE I
IN GENERAL

Section 41-1. Title and Purpose.

- (a) Title: This chapter shall be known and may be cited as the "Cable Television Consumer Protection Policy of the City of Kalamazoo."
- (b) Purpose: The general purpose of this chapter is to protect the public health, safety, comfort and the general welfare of the people of the City. These general objectives include, among others, the following specific purposes:
 - (1) To protect consumers of cable television services, (hereinafter referred to as "subscribers") from billing, appointment, scheduling, installation, maintenance, repair, program deletion, and other service problems avoidable by the due diligence of a cable system operator; and
 - (2) To protect consumers of cable television services ("subscribers") and their homes by providing parameters for the scheduling of service and installation appointments.

Section 41-2. Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

- (a) Appointment window--means a specifically scheduled block of time in which service and/or installation and/or disconnection is scheduled to occur, when a cable operator's staff is to arrive at the consumer's home, office, business or other location;
- (b) Basic cable service--means any service tier which includes the retransmission of local television broadcast signals;

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- (c) City--is the City of Kalamazoo, its elected and appointed officers, and/or their authorized designee(s) acting on behalf of the City in a fiduciary capacity;
- (d) Cable administrator--is the term for the City's authorized designee on cable television matters;
- (e) Cable consumer protection law--this chapter, any other ordinance of the City of Kalamazoo or statute of the State of Michigan pertaining or related to the conditions, billing and provision of cable television services to subscribers, which ordinance or statute serves to protect the interests of parties subscribing (or considering subscribing) to cable television services.
- (f) Cable operator--means any person, or group of persons:
 - (1) who provides cable service over a cable system or directly or through one or more affiliates owns a significant interest in such cable system; or
 - (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;
- (g) Cable service--means:
 - (1) The one-way transmission to subscribers of:
 - (A) video programming, or
 - (B) other programming or electronic services; and
 - (2) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- (h) Cable system--means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming, or other electronic services, and which is provided to multiple subscribers within a community, but such term does not include:

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- (1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
 - (2) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;
 - (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Federal Communications Act of 1934, except to the extent that such facility shall be considered a cable system (other than for purposes of Title 47 of the United States Code, Section 541(c));
 - (4) a facility, to the extent such facility is used in the transmission of video programming directly to subscribers; or
 - (5) any facilities of any electric utility used solely for operating its electric utility systems;
-
- (i) Customer service--means the direct business relation between a cable operator and a subscriber, including but not limited to programming, installation, disconnection, and reconnection.
 - (j) Customer service requirements--include, but are not limited to, requirements related to interruption of service; disconnection; rebates and credits to consumers; deadlines to respond to consumer requests or complaints; the location of a cable operator's consumer service offices; and the provision to customers (or potential consumers) of information on billing or services.
 - (k) Educational Access Channel--means any channel on which certain schools, as defined herein, may cablecast educational programs on a first come, first served, non-discriminatory basis.
 - (l) Government Access Channel--means any channel on which the City may cablecast.

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- (m) Normal Business Day--means those days from Monday through Friday, inclusive, except for federal, state and local holidays.
- (n) Other programming service--means information that a cable operator makes available to all subscribers generally, other than what is already defined in this section.
- (o) Person-- means an individual, partnership, association, joint stock company, joint venture, trust, corporation, or other entity.
- (p) Public Access Channel--means any channel on which any resident of Kalamazoo County may cablecast, without charge, on a first come, first served, non-discriminatory basis, onto a cable system operating within the City of Kalamazoo.
- (q) Public, educational, or government (or "PEG") access facilities--means:
 - (1) channel capacity designated for public, educational, or governmental use; and
 - (2) facilities and equipment for the use of such channel capacity.
- (r) Service tier, or tier means a group of cable services or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
- (s) Service window means the same as "appointment window" in subsection (a) above.
- (t) Signal means a television channel signal, or radio frequency or light wave signal, capable of carrying intelligence.
- (u) Subscriber--means a consumer of cable television services, who is a customer of a cable operator, and who subscribes to and is provided with cable television services.
- (v) Video programming--means programming provided by, or generally considered comparable to programming provided by television broadcast stations, the multi-channel/multi-point distribution service, direct

broadcast satellites, optical fiber, and similar or equivalent multi-channel distribution systems.

Section 41-3. Compliance with Chapter, Generally.

No person, individual, party, partnership, corporation, joint venture, consortium, trust, or other entity shall provide or contract to provide cable television services within the City of Kalamazoo except so as to comply with all applicable provisions of this chapter.

Sections 41-4 -- 41-10. Reserved.

ARTICLE II

CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS

DIVISION ONE

OFFICE AND TELEPHONE SERVICE

Section 41-11. Service Center and Bill Payment Locations--Hours of Availability.

The Kalamazoo Customer Service Center and bill payment locations will be open for transactions during the following hours:

- (a) Monday through Friday (holidays excepted) from 8:30 a.m. through 6:00 p.m.; and
- (b) Saturdays from 9:00 a.m. until 12 noon (holidays excepted).

Section 41-12. Customer Service Availability

Knowledgeable, qualified company service representatives will be available to respond to customer telephone inquiries during the following times:

- (a) Monday through Friday (holidays excepted) from 8:30 a.m. to 6:00 p.m.; and
- (b) Saturdays from 9:00 a.m. to 12 noon (holidays excepted).

Section 41-13. Limitation Regarding Telephone Busy Signals.

Under normal conditions, the subscriber will receive a busy signal less than three percent (3%) of the total time that the Kalamazoo cable office is normally open for business.

Section 41-14. Telephone Response Time.

(a) Generally.

- (1) Under normal operating conditions, telephone answer time by a customer service representative, including wait time, and the time required to transfer the call, shall not exceed one (1) minute from the effective date of this ordinance through March 1, 1991, and forty-five (45) seconds after March 1, 1991.
- (2) Those systems which utilize automated answering and distributing equipment will limit the number of routine rings to four (4) or fewer. Systems not utilizing automated equipment shall make every effort to answer incoming calls as promptly as the automated systems.
- (3) This standard shall be met no less than ninety percent (~~90%~~) of the time measured on an annual basis. *100%*

(b) Service as of the Effective Date of this Ordinance

Under normal operating conditions, from the effective date of this Ordinance through March 1, 1991, all times during regular business hours, the cable operator shall connect a telephone caller to a live qualified customer service representative of the cable operator within one (1) minute.

- (1) Said representative shall be capable of responding to the cable related inquiries and requests of a

consumer, including but not limited to, scheduling appointments, adjusting accounts for credits, payments or debit inquiries, and dispatching technicians to a subscriber's residence or area for a service call.

- (2) The cable operator shall not be considered to be in compliance with the one (1) minute response time if the cumulative effect of the response time and any time "on hold" exceeds one (1) minute. As an example, if the delay from the time the telephone rings until the time the cable operator answers the telephone exceeds twenty (20) seconds, and the "hold time" is forty (40) seconds, this would exceed one (1) minute and would be a violation.
- (3) The one (1) minute response time standard shall be met no less than ninety percent (90%) of the time measured on an annual basis.

(c) Service after March 1, 1991

Under normal operating conditions, commencing on March 1, 1991, and at all times during regular business hours thereafter, the cable operator shall connect a telephone caller to a live qualified customer service representative within forty-five (45) seconds.

- (1) Said representative shall be capable of responding to the cable related inquiries and requests of a consumer, including but not limited to, scheduling appointments, adjusting accounts for credits, payments or debit inquiries, and dispatching technicians to a subscriber's residence or area for a service call.
- (2) The cable operator shall not be considered to be in compliance with the forty-five (45) second response time if the cumulative effect of the response time and any time "on hold" exceeds forty-five (45) seconds. As an example, if the delay from the time the telephone rings until the time the cable operator answers the telephone exceeds twenty (20) seconds and "hold time" is twenty-five (25) seconds, this would exceed forty-five (45) seconds.

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- (3) The forty-five (45) second response time standard shall be met no less than ninety percent (90%) of the time measured on an annual basis.

Section 41-15. Subscriber complaints--Timely Response.

- (a) Response to subscriber complaints shall be initiated within one (1) business day of receipt; and
- (b) The resolution of ^{response} subscriber complaints shall be effected by the Operator not later than three (3) business days after receipt of the complaint;
- (c) Should a supervisor not be available when requested by a subscriber, a supervisor employed by the operator shall return the subscriber's telephone call at the earliest possible time and in no event later than the end of the next business day.

Sections 41-16 -- 41-20. Reserved.

DIVISION TWO

INSTALLATIONS, OUTAGES, AND SERVICE CALLS

Section 41-21. Generally.

Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on an annual basis.

Section 41-22. Installations.

- (a) "Standard" installations are those located less than one hundred and twenty-five (125) feet from the existing distribution system, including feeder cable.
- (b) Standard installations will be performed within seven (7) calendar days after an order has been placed.

Section 41-23. Service Problems.

- (a) The cable operator will respond to service interruptions promptly and in no event later than twenty-four (24) hours.
- (b) Other service problems will be responded to within thirty-six (36) hours during the normal work week.
- (c) Outages, less than system-wide. Upon failure of the cable operator to remedy a loss of service attributable to the Cable System within twenty-four (24) hours of receipt of notification of such loss, the cable operator shall rebate one-thirtieth (1/30) of the regular monthly charge to each subscriber so affected, for each twenty-four (24) hours or fraction thereof, following the first twenty-four (24) hours after receipt of notification, until service is restored, unless such restoration is prevented by strike, injunction or other cause beyond control of the cable operator. Such rebate shall be made by the cable operator only following reasonable written notification and substantiation to the cable operator by the subscriber, identifying the loss of service by channel description and date and time.

(d) Outages, system-wide.

- (1) The cable operator shall provide an automatic credit to all subscribers when there is an outage of all basic services for a period of twenty-four (24) consecutive hours or more which affects the entire service area, regardless of the cause of the outage. The credit shall equal, at a minimum, the value of receiving one day's basic service for each twenty-four (24) consecutive hour period. "One day" shall be considered to be one-thirtieth (1/30) of the regular monthly charge for each subscriber so affected.
- (2) The cable operator shall provide an automatic credit to all subscribers of an affected premium channel when there is an outage of such premium service for a period of twenty-four (24) consecutive hours or more which affects the entire service area, regardless of the cause of the outage. The credit shall equal, at a minimum, the subscriber's cost of receiving one day's cable service for each affected premium channel that for each twenty-four (24) consecutive hour period. "One day" shall be considered to be one-thirtieth (1/30) of the regular monthly value of the premium channel.

Section 41-24. Scheduled Appointments

(a) Appointment windows.

Whenever a consumer requests an appointment for installation, repair, maintenance, or other service, and the parties have agreed that the presence of the consumer or his designee is required, the cable operator shall offer and specify a four-hour time period within which the installation, repair or maintenance appointment must be commenced.

(b) Consumer's choice of appointment windows.

The cable operator shall offer the subscribing consumer a choice of specific times for a scheduled appointment. The consumer's choice of "appointment windows" shall include, at a minimum:

- (1) Saturday mornings (8:00 a.m. until 12 noon);
- (2) Mornings (8:00 a.m. until 12 noon) during a specific "normal business day" (Monday through Friday inclusive, except holidays);
- (3) Afternoons during a specific "normal business day", subject to:
 - (A) A four (4) hour appointment window chosen by the subscriber, and
 - (B) That four (4) hour long appointment window will not extend past 6:00 p.m.; and
- (4) An elongated "appointment window" which may be selected by the subscriber for "all day" on a specific date which is also a "normal business day".

(c) Cable Operator's Compliance with Appointment Window.

The cable operator is required to adhere to the 4-hour period for commencing installation, repair or maintenance appointments with the subscriber unless there are delays caused by unforeseen or unavoidable occurrences beyond the control of the cable operator.

(d) Operator's Failure to Comply -- Consumer's Options

In the event that the cable operator fails to meet the four (4) hour period for subscriber installation, disconnection, or maintenance appointments, subject to sub-section (f) below, the affected consumer will be entitled to receive credit(s):

- (1) The above-referenced credit shall equal the value, at the subscriber's election, of either:
 - (A) one month's basic service for the failure by the cable operator to meet the scheduled four (4) hour period for commencing the installation, disconnection, repair, maintenance or other service appointment at the subscriber's home, business office or other service location, regardless of whether

the appointment is subsequently rescheduled and attended; or

(B) the installation charge, service charge, etc. that the consumer would otherwise incur for performance of the scheduled service; and

(2) The subscriber will be given a credit of an additional one (1) month's basic service for any rescheduled appointment wherein the cable operator's service and/or installation-disconnection staff fails to appear within the four-hour appointment window.

(e) Subscriber's Failure to be Present.

A credit shall not have to be provided in the event that the subscriber was not present at the time of the scheduled and confirmed installation, service, repair, maintenance, "other installation" or other service appointment.

(f) Diligent Notice.

A credit shall not have to be provided if the cable operator makes a diligent attempt to notify the subscriber of a delay caused by unforeseen or unavoidable occurrences beyond the control of the cable operator or its service/installation employees, or the cable operator or its agents were unable to notify the subscriber because of the subscriber's absence or unavailability during the scheduled appointment and, in either instance, the cable operator commenced service or repairs within a newly agreed upon two (2) hour period.

(g) Subscriber's Opportunity to Elect Remedies.

Prior to awarding a subscriber the credit specified in sub-section (d) above, the cable operator must give each subscriber the opportunity to elect the remedies provided in sub-section (d) or to accept the credit specified in sub-section (d) herein. This election of remedies must be an affirmative decision on the part of the subscriber, and the cable operator must inform the subscriber of the monetary value of making either decision.